

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. CR 18-129
)	Milwaukee, Wisconsin
vs.)	
)	December 19, 2018
IONEL MURESANU,)	11:30 a.m.
)	
Defendant.)	

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE J.P. STADTMUELLER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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For the Defendant IONEL MURESANU: (Present)	Federal Defender Services of Wisconsin, Inc. By: JOSHUA D. ULLER 517 E Wisconsin Ave - Rm 182 Milwaukee, WI 53202 Ph: 414-220-9900 Fax: 414-220-9901 joshua_uller@fd.org
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P R O C E E D I N G S (11:30 a.m.)

THE CLERK: The Court calls *United States vs. Ionel Muresanu*, Case No. 18-CR-129, for the imposition of sentence.

May I have the appearances beginning with the government?

MS. KRAFT: Good morning, Your Honor. Carol Kraft, assistant United States attorney, appears for the United States.

With me at counsel table is Special Agent Zach Hoalcraft. He was the agent in charge of this investigation, from the Secret Service.

PROBATION OFFICER: Good morning. Daniel Dragolovich with U.S. Probation.

MR. ULLER: Good morning, Judge. Mr. Muresanu appears with Joshua Uller.

THE COURT: Thank you. Good morning, Ms. Kraft, and good morning to you, Agent Hoalcraft, and good morning to you, Mr. Dragolovich, good morning to you, Mr. Uller, and good morning to you, Mr. Muresanu.

Ionel Muresanu, back on September 11th of this year you were found guilty following a jury trial as to the offenses charged in Count 1 of the underlying indictment, namely, possession of 15 or more counterfeit and unauthorized access devices, constituting a violation of Title 18 of the U.S. Code, Section 1029(a) (3) and 2, and Counts 2 through 4 of the same indictment which charge aggravated identity theft in violation

1 of Title 18, Section 1028A(a) (1).

2 We have now reached that stage of these proceedings
3 where it becomes the duty of the Court to address several
4 questions to both you and counsel.

11:32 5 First of all, Mr. Muresanu, have you had sufficient
6 opportunity to review the revised presentence report prepared in
7 your case under date of December 6th of this year, as well as
8 the addendum to that report which bears the same date, namely,
9 December 6?

11:33 10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Thank you. Similarly, Mr. Uller, have you
12 had the opportunity to review both documents?

13 MR. ULLER: Yes, Judge.

14 THE COURT: And are there any facts disclosed in the
11:33 15 numbered paragraphs of the revised presentence report that
16 either you or your client take issue with or otherwise seek
17 clarification on?

18 MR. ULLER: Well, Judge, there are -- paragraphs 21
19 through 29 were added to the revised presentence report. And
11:33 20 they're based on the transcript of jail calls that the
21 government filed on November 30th. I've requested those jail
22 calls. Ms. Moreno-Taxman has been -- I guess out of the
23 country. I had conversations with Ms. Kraft, and yesterday the
24 government provided the actual copies of those calls to me.
11:34 25 I've provided, when they came, the transcripts to Mr. Muresanu.

1 The calls are in Romanian. I don't speak Romanian. And so
2 Mr. Muresanu hasn't had a chance to review the calls.

3 I don't know the extent to which the Court finds them
4 relevant to the sentencing process, but I'm not really in a
11:34 5 position to I guess address those paragraphs of the report.

6 Aside from that, beyond the -- I know the Court was
7 asking about factual disputes. Beyond what underlies the
8 objections that the defense has submitted, we don't.

9 THE COURT: All right, thank you.

11:35 10 Ms. Kraft, have you had an opportunity to review the
11 revised presentence report?

12 MS. KRAFT: I have, Your Honor. I have also discussed
13 it with AUSA Moreno-Taxman, who is presently in Malaysia on a
14 detail, and we don't have any objection or quarrel with any of
11:35 15 the facts that are set forth.

16 THE COURT: All right, thank you.

17 Well, as to Mr. Uller's concern, if any, with regard
18 to these calls from the jail, what it really plays into is more
19 of a parent I guess trying to ensure that his child is in
11:35 20 keeping with the parent's desire.

21 I don't find anything of note that would implicate any
22 sentencing determination. Frankly, it really goes more toward
23 speaking of the character of the parent as opposed to the
24 character of the defendant. And at some point, whether it's in
11:36 25 the context of asylum or other considerations, I think what it

1 speaks to is Mr. Muresanu's father's view of the law and the
2 view of truthfulness as opposed to anything else. And that's
3 unfortunate for Mr. Muresanu's father, not for Mr. Muresanu who
4 is before the Court today.

11:36 5 The Court, having no other concern with the facts, it
6 will adopt all of the facts as they are detailed in the numbered
7 paragraphs and will rely on them first in determining the
8 advisory sentencing guidelines applicable in Mr. Muresanu's
9 case, together with the terms of the ultimate sentence,
11:37 10 particularly as to the guideline count which is captured in
11 Count 1.

12 Now, as to those advisory guidelines, the probation
13 department has submitted the following metric. It includes a
14 total offense level of 24; criminal history category I, which in
11:37 15 combination with the offense level carries a guideline term of
16 imprisonment of 51 to 63 months as to Count 1; followed by a
17 statutory mandatory consecutive sentence as to the offenses
18 charged in Counts 2 through 4; any term of imprisonment to be
19 followed by a term of at least 1 but not more than 3 years of
11:38 20 supervised release as to Count 1; and a 1-year term of
21 supervised release applicable to the offense charged in Counts 2
22 through 4; \$146,721.80 in restitution; fine of not less than
23 \$20,000 nor more than \$200,000; and finally, a \$100 special
24 assessment on each count, or a total special assessment of \$400.

11:38 25 Mr. Uller, I appreciate you've interposed a number of

1 objections to the probation department's guideline metric
2 applicable to Count 1. Those objections have been addressed in
3 the December 6th addendum to the presentence report. And to the
4 extent that you wish to further comment on either your position
11:39 5 or the government's, or ultimately the probation department with
6 regard to the objections, now is your opportunity.

7 MR. ULLER: Thank you, Judge. I did submit a
8 sentencing memorandum earlier this week that addressed -- kind
9 of I guess addressed those in a little bit more detail. There's
11:39 10 one additional point I wanted to make as to the -- I guess what
11 would be paragraph 35 of the presentence report, which is
12 determining the applicable loss amount.

13 And the commentary to the guidelines indicate that in
14 determining the loss amount, that the loss amount shown not be
11:40 15 less than \$500 per card or per access device. It doesn't call
16 for a \$500 amount per card. It just says that in determining
17 the loss amount that the -- that the loss amount shouldn't be
18 less than \$500 per card.

19 And as indicated, the bank here was able to determine
11:40 20 a loss amount independent of the -- you know, using a per-card
21 amount. That loss amount includes I believe most if not all of
22 the cards that Mr. Muresanu had in his possession, and that loss
23 amount is greater than \$500 per card. It comes out to about
24 1500 -- just under \$1500 per card.

11:41 25 So we submit that there's really no basis to calculate

1 the loss amount based on the actual loss amount, and then also
2 adding on a \$500 per card loss amount to get to the 196,721
3 level.

4 So we believe that the correct enhancement would be an
11:41 5 eight-level enhancement and that's what we're asking the Court
6 to do.

7 As to the other objections, I don't have more to add
8 beyond what was in the sentencing memo and the objections.

9 THE COURT: All right, thank you.

11:42 10 Ms. Kraft, anything more on the matter of the loss
11 amount?

12 MS. KRAFT: I believe that Mr. Dragolovich has relied
13 upon the correct guideline calculations to determine this. And
14 I have not looked at the case that he cited, but I believe that
11:42 15 the way that he has done this is correct.

16 I would note that we are able to definitively show
17 that First Tennessee Bank lost 146,000 and some dollars as a
18 result of the defendant's conduct. But we don't know how much
19 additional loss was incurred by other banks that had to
11:42 20 reimburse their accountholders for cards that Mr. Muresanu
21 either had on his person or had otherwise used.

22 And as the Court knows, we were able to identify some
23 of the victims who were the actual accountholder of the hundred
24 cards that Mr. Muresanu had on him, not all of which came from
11:43 25 his use of the skimmers at First Tennessee Bank. Some of which

1 clearly, based on his own confessions, came from skimmers that
2 he had placed on other banks in other communities.

3 We had some difficulty getting some of the account
4 information partly I think because of the Bank Secrecy Act. As
11:43 5 the Court knows, with grand jury subpoenas we can get a lot of
6 banking information. With another type of -- or trial
7 subpoenas, we're not able to get bank account information who
8 are not targets or subjects of a case without the consent of the
9 accountholder. So it becomes sort of a circular process. If
11:43 10 you don't know the name of the actual accountholder, it's hard
11 to get the consent to get that information.

12 Agent Hoalcraft did the very best he could to identify
13 the various people who were affected by Mr. Muresanu's crimes.
14 But I think that calculating the total loss based on the
11:44 15 combination of what we know from First Tennessee and the \$500
16 per card that was -- that were in the possession of Mr. Muresanu
17 and also his accomplice that day, is more than a reasonable way
18 to determine guideline calculation and I would submit to the
19 Court that it's correct.

11:44 20 THE COURT: All right. Here's the question that the
21 Court has. I think we're trying to mix a little bit of apple
22 and orange. On the one hand, we have a defined loss of
23 \$146,721.80. That's clear. What the difficulty that Mr. Uller
24 has is that at the time of Mr. Muresanu's arrest it would
11:45 25 appear, for sake of our discussion, he had 100 access cards that

1 were recovered.

2 If I read Mr. Uller's argument correctly, what he is
3 suggesting -- and both of you and Mr. Dragolovich can correct
4 the Court if we're in the wrong -- is that some -- perhaps 10,
11:45 5 12, 15, maybe 25 of those particular cards have been already
6 accounted for in the \$146,000 figure. Or are these cards that
7 were not used therefore they were not counted. That's the
8 question that the Court has.

9 MS. KRAFT: I don't know that we can definitively
11:46 10 answer that. If the Court can instruct us on how we might go
11 about doing that --

12 THE COURT: Well, you mentioned minutes ago you had
13 not read the case.

14 MS. KRAFT: I haven't.

11:46 15 THE COURT: All right. We can start, I think Judge
16 Manion's opinion in the *Moore* case that's cited by
17 Mr. Dragolovich is dispositive. And that is, you start with the
18 actual loss and if there are additional cards, but what the
19 opinion doesn't address is are these cards that may have been
11:46 20 partially used or are they sort of in futuro, if you will, going
21 to be used because he had them on his person. I don't know what
22 the answer to that is because it's not detailed.

23 Mr. Dragolovich, do you have any thought on that?

24 PROBATION OFFICER: Well, Judge, I asked

11:47 25 Ms. Moreno-Taxman this exact question and I was told these cards

1 were completely separate from that. But other than that, I
2 don't have any additional information. So that's the
3 information I was relying on in making that recommendation.

4 THE COURT: Your recommendation, as I read the *Moore*
11:47 5 case, is spot on. Of the issues that Mr. Uller raised in his
6 objections, if that's the set of facts, this is the easiest of
7 the objections to deal with because the Seventh Circuit has
8 ruled on it very definitively.

9 PROBATION OFFICER: And again, that is the information
11:47 10 I was told, but I don't have anything beyond that. So if that's
11 incorrect that would change my recommendation.

12 THE COURT: Well, then it gets down to the real fine
13 point of maybe 10 of the cards were. But, you know, the
14 threshold that we have to meet is not 250,000, it's 150, and
11:48 15 we're pretty close to 150 at 146.

16 PROBATION OFFICER: Correct.

17 MS. KRAFT: Well, we do know -- I think that we do
18 know that the 80 cards that he had in his possession,
19 Mr. Muresanu, personally had not been used yet. Because what he
11:48 20 was doing at the ATM machines in Oshkosh, was checking them for
21 the balance. And he would always do that before he would -- at
22 least according to the investigation -- before he would attempt
23 to take money out.

24 There were receipts that we had for other cards that
11:48 25 had been used at various gas stations and filling stations along

1 the route from wherever he had come from to Oshkosh. I can't
2 remember if it came from Tennessee or St. Louis.

3 THE COURT: Are those amounts in the 146,000?

4 MS. KRAFT: Pardon?

11:48 5 THE COURT: Are those amounts captured in the 146,000?

6 MS. KRAFT: I don't believe so. I believe that those
7 are additional to; that those cards that were on his person were
8 cards that had not yet been used to access money from the
9 accountholders who's information had been encoded on the back.

11:49 10 That's my understanding.

11 There were the six cards in the bathroom that were
12 recovered, that one of the detectives recovered that had been
13 used, and that's why they were discarded. But I believe that
14 the -- all of the 80 on his person had not been used. And I

11:49 15 think that if we go back and look at the evidence, that we would
16 be able to establish that.

17 Am I correct, Agent Hoalcraft?

18 AGENT HOALCRAFT: You're correct, yeah.

19 THE COURT: All right. Mr. Uller, anything more?

11:49 20 MR. ULLER: Just that my understanding is that the

21 reason the representative from First Tennessee Bank was
22 testifying in this trial is because the vast majority of the
23 cards that were possessed in this case were cards that were --
24 the information was obtained from the skimming devices that were
11:50 25 placed on the ATMs at First Tennessee Bank.

1 I don't have -- and I agree with the Court that it's
2 close to the \$150,000 threshold.

3 The -- I also agree that the Court's reading of *Moore*
4 is spot on.

11:50 5 What we don't have and what the government hasn't done
6 in this case, is demonstrated that there are cards -- and it's
7 their burden -- that there are cards that were in my client's
8 possession that are not used to reach that \$146,000 calculation.
9 It would be complete speculation to guess 10, 20. Even, you
11:51 10 know, 89 of them would be speculation.

11 So, you know, it's for that reason that we think that
12 the objection should be sustained.

13 THE COURT: All right. Anything else on any of your
14 other objections?

11:51 15 MR. ULLER: No, Your Honor.

16 THE COURT: Ms. Kraft, anything more you'd like to add
17 on any of the balance of the objections?

18 MS. KRAFT: I don't. I believe that the objections
19 that the -- that Ms. Moreno-Taxman's response to the objections
11:51 20 and Mr. Dragolovich's ultimate conclusion are correctly
21 determined.

22 THE COURT: All right. Well, as I am obliged to find,
23 I believe that in the matter before the Court the actual loss,
24 as submitted in the presentence report of \$146,721.80, is based
11:52 25 on actual loss.

1 That leaves the matter of how the Court ought to view
2 the balance of the cards in ascribing a loss for purposes of the
3 sentencing guidelines.

4 The guidelines suggest, per access device, \$500. Even
11:53 5 if out of the 80 or 100 cards only 20 of them had not been used
6 and, therefore, score lower, that would bring us above the
7 \$150,000 threshold. It defies reality. Keeping in mind at the
8 sentencing hearing we're not dealing with proof beyond a
9 reasonable doubt but, rather, the preponderance of the evidence.

11:53 10 And looking at the scheme as a whole, it defies
11 reality that Mr. Muresanu would not have had in his possession
12 cards that had not been previously used. Whether the number is
13 all 100 that Mr. Dragolovich used, or 20, or some number
14 in-between, whatever that number is triggers the 10-level
11:54 15 increase. Because as the Court noted earlier, pursuant to U.S.
16 Sentencing Guideline 2B1.1(b)(1)(F), if the loss falls between
17 150 and 250, there is a 10-level increase. And I find, based on
18 the credible evidence, that that threshold has been met and,
19 accordingly, the Court overrules the objection.

11:54 20 As to the balance of the objections with respect to
21 the matter of sophisticated means and role in the offense, we
22 can begin that analysis by simply capturing that which appears
23 in paragraph 19 of the presentence report as against the
24 totality of the evidence in the case. And it is abundantly
11:55 25 clear to any reasonable viewer of the underlying facts that this

1 entire scheme was indeed quite sophisticated. Whether it be how
2 Mr. Muresanu traveled across the country, the selection of
3 facilities to hoist these skimmers on, the time of day, how they
4 were secreted, the list just goes on and on. And here, too,
11:56 5 there can be no doubt about the fact that this is a far, far
6 deeply involved scheme that Mr. Muresanu and his confederates
7 participated in. And there, too, the Court is constrained to
8 reject the suggestion that the offense conduct did not leave out
9 sophisticated means.

11:56 10 With respect to the matter of role in the offense and
11 the use of a minor, it is equally clear to this court, based
12 upon the evidence received during the trial, together with the
13 analysis addressed in the December 6 addendum, that the
14 Probation Department in each instance got it correct and there,
11:57 15 too, the Court is constrained to reject the suggestion that
16 Mr. Muresanu played a minor role and did not use a minor in
17 connection with the commission of the conduct that underlies
18 this case.

19 So on the state of the record the Court is constrained
11:57 20 to adopt the guideline score applicable to the conduct charged
21 in Count 1, namely: A total offense level of 24; criminal
22 history category I, which in combination with the offense level
23 carries a guideline term of imprisonment of 51 to 63 months;
24 followed by a 24-month consecutive sentence as to the conduct
11:58 25 charged in Counts 2 through 4; term of at least 1 but not more

1 than 3 years of supervised release as to Count 1; a 1-year term
2 of supervised release as to each of Counts 2 through 4;
3 \$16,720.80 in restitution; fine of not less than \$20,000 nor no
4 more than \$200,000; finally, a \$100 special assessment on each
11:58 5 count of conviction, or a total special assessment of \$400.

6 Having made those determinations, Ms. Kraft, does the
7 government have any independent objection as to the guidelines?

8 MS. KRAFT: The government does not. I think they're
9 correctly calculated, Your Honor.

11:59 10 THE COURT: Thank you. Having made those
11 determinations, Mr. Uller, do you or your client have any reason
12 to advance this morning as to why the Court ought not proceed
13 today with the imposition of sentence in this case?

14 MR. ULLER: No, Judge.

11:59 15 THE COURT: Are there some further comments that you
16 would like to make on the matter of an appropriate sentence
17 beyond those addressed in your December 17 sentencing memo?

18 MR. ULLER: Just briefly, Judge.

19 You know, I've long thought it was a fine line between
11:59 20 crediting a defendant for accepting responsibility and punishing
21 a defendant for going to trial. In June and July, the
22 government was of the view that a two-year sentence was an
23 appropriate disposition in this case. I don't yet know what the
24 government's going to ask for, whether it's a guideline
12:00 25 sentence, whether it's something above that. But the variance

1 in the government's view on what an appropriate outcome in this
2 case is, is not just not crediting someone for accepting
3 responsibility. It's a clear punishment for exercising a
4 constitutional right to go to trial.

12:00 5 I understand in some cases why a trial penalty might
6 be appropriate. I don't think those circumstances are present
7 here. There are a lot of factors that go into this, Judge, and
8 I've touched on them briefly in the sentencing memorandum.

9 I can't reiterate enough the fact that Mr. Muresanu
12:01 10 came into this as a freshly-turned 18-year-old kid who had never
11 been in jail before; had not been in the country very long;
12 didn't know how things worked, and here he is in a faraway place
13 from his family and quite immature.

14 And in this building I don't represent a lot of
12:01 15 18-year-olds. Prior to being in the Federal Defender's office I
16 represented countless, both juveniles and people in their 17-,
17 18-, 19-year-old range. And Mr. Muresanu isn't a lot different
18 from those individuals. When they're in custody they have a
19 one-track mind. The only thing that they can think about and
12:02 20 talk to their lawyer about is getting out of jail.

21 And Mr. Muresanu's immaturity and unfamiliarity with
22 our system played a role in this case. And, you know, he never
23 denied his involvement in the offense conduct. He was highly
24 cooperative. The Court saw all of I think four of his
12:02 25 confessions. And certainly with the benefit of hindsight

1 Mr. Muresanu would have -- given the opportunity given to him
2 today, he would have jumped on that.

3 And, you know, there's obviously a role that counsel
4 plays in that process and -- and, you know, decisions were made.
12:03 5 I probably should have been more insistent that Mr. Muresanu
6 focus on the outcome of the case rather than pretrial release.
7 But it's not a situation where he was being obstinate or
8 defiant.

9 You know, his lawyer told him about a possible
12:03 10 strategy to the case. And, you know, the Court -- I understand
11 how the Court feels about that and I understand how the
12 government feels about that. And again, with the benefit of
13 hindsight Mr. Muresanu would have probably gone a different
14 route.

12:03 15 But, you know, if two years was a sufficient
16 punishment in the government's eyes before trial, there's
17 nothing new to suggest -- that the government has learned to
18 suggest that's not appropriate now. The government hasn't
19 learned anything new about Mr. Muresanu. He was an open book.
12:04 20 Anything that was obtained was information that he provided to
21 them.

22 I understand that in society when you see something it
23 has a different impact on the viewer than just hearing about it.
24 Maybe seeing him actually place a skimming device on a ATM
12:04 25 machine may have made him look worse, but the government knew

1 that he was placing those on the devices. Mr. Muresanu admitted
2 that he was placing them on the devices.

3 You know, there's another matter here with 1028A and
4 its corresponding relationship to the offense charged in
12:05 5 Count 1. And I can't come up with a scenario where someone can
6 commit the offense that Mr. Muresanu committed in Count 1
7 without also committing aggravated identity theft. If you
8 possess 15 or more unauthorized access devices, 15 or more
9 fraudulent cards, that's 15 or more counts that could be charged
12:05 10 with aggravated identity theft.

11 And so, you know, the decision to charge 1028A and the
12 number of charges to bring is, in many respects, a function of
13 the government's exercise of discretion. Here the government
14 elected to pursue three 1028A charges. As I think
12:06 15 Ms. Moreno-Taxman indicated in the government's closing
16 argument, they could have brought 80.

17 And, you know, the question really is, so we have this
18 two-year minimum, how much more than that is necessary? And,
19 you know, the Court's made its ruling on the guidelines. I
12:06 20 think whether the Court wants to look at it as a guideline issue
21 or a issue about the nature and circumstances of the offense.
22 You know, Mr. Muresanu was a worker for this person named Vidu.
23 And I think the record clearly reflects that this Vidu, V-i-d-u,
24 was an older, more sophisticated person who preyed upon a either
12:07 25 16- or 17-year-old kid who was new to this country, not in

1 school, and took advantage of him.

2 And Mr. Muresanu, you know, helped this person. You
3 know, there's no dispute that he did what he did. But it's
4 quite clear that the offense in this case was driven by Vidu,
12:07 5 and Vidu used Mr. Muresanu to do the dirty work so that he
6 wouldn't get caught.

7 In many respects the nature and circumstances of the
8 offense kind of bleeds into the history and characteristics of
9 the defendant because in this case I think one of the mitigating
12:07 10 circumstances of the offense is Mr. Muresanu's age. And I've
11 submitted in the sentencing memorandum some studies and views of
12 our Supreme Court on adolescents who engage in criminal
13 behavior.

14 What can't really be disputed is that as an
12:08 15 adolescent, new to this country, Mr. Muresanu knew right from
16 wrong. Not in dispute. What he didn't necessarily fully
17 appreciate was the other considerations that this court has
18 like, you know, respect for the rule of law, things like
19 deterrence, just punishment.

12:08 20 The reality is that his immaturity and lack of
21 familiarity with the norms of this country slanted his judgment.
22 It led him and impacted him to do things that he might not
23 otherwise have done.

24 I think the Court does need to consider the need to
12:09 25 avoid unwarranted sentencing disparities. I've provided the

1 Court with some quite recent examples of other very similar
2 instances, very similar cases. The offense -- or the sentences
3 imposed in those cases are in line with the type of sentence I'm
4 asking the Court to impose in this case.

12:09 5 I understand that's different than what the
6 guidelines -- where the Court has calculated the guidelines.
7 It's my view that the calculation of the guidelines that the
8 Court has adopted don't accurately reflect either the history
9 and characteristics of this offense or the nature and
10 circumstances of this defendant.

11 So we're asking the Court to impose a sentence
12 obviously of two years on the 1028A counts. And then, to the
13 extent the Court feels that additional punishment is necessary
14 beyond that -- of course, Mr. Muresanu, I know the Court has
12:10 15 provided conditions of supervised release. The presentence
16 report reflects that Mr. Muresanu will be deported. That's my
17 understanding. That's a drastic consequence. Not an
18 inappropriate consequence, but a very severe consequence for an
19 18-year-old who has basically no life left in Romania. He does
12:10 20 have a sibling there, but one that he's not particularly close
21 to. His family will be left behind.

22 And so that's a very significant penalty that the
23 guidelines don't contemplate, and we believe that it's an
24 appropriate sentence.

12:11 25 THE COURT: All right, thank you.

1 Mr. Muresanu, do you have some comments you'd like to
2 make this afternoon?

3 MR. ULLER: Yes, Your Honor. I am truly sorry for
4 what I've done. I know what I've done is wrong. And I want to
12:11 5 say sorry to the victims.

6 I also think the time I've sat in jail the past seven
7 months, I had enough time to think about what I've done, and I
8 think I also had enough time to grow up.

9 That's all I have to say.

12:12 10 THE COURT: All right, thank you.

11 Ms. Kraft?

12 MS. KRAFT: Well, Judge, as the Court can probably
13 imagine, the government has a different view of Mr. Muresanu and
14 the offense that he committed and the -- him as an
12:12 15 unsophisticated defendant than Mr. Uller has advanced.

16 The government's recommending that the Court sentence
17 the defendant within the guideline range, at the high end of the
18 guideline range on Count 1, to a sentence of 60 months, and a
19 consecutive sentence of 24 months on Counts 2, 3, and 4,
12:12 20 concurrent to each other but consecutive to Count 1, for a total
21 of 84 months.

22 And the reason is this. This was, as the Court has
23 already determined in examining the sophistication of this
24 crime, a very sophisticated offense. It was an offense that is
12:13 25 of the type that's ongoing today in the United States that's

1 very hard to detect and very hard to stop and very hard to bring
2 people to justice.

3 And in the defendant's own words, he traveled about
4 the country putting these skimming devices on various ATM
12:13 5 machines, taking the skimming devices off of ATM machines,
6 turning them over to another person who used the information
7 that was captured to create these gift cards.

8 Some of the people who were victims in this case, some
9 of the people whose account information was compromised, whose
12:13 10 identity was stolen and put onto those gift cards, don't even
11 know today that they have been victims of this offense. We have
12 the hundred cards that were introduced at trial, and when this
13 case is totally finished we will destroy them. But there's no
14 way for us to know that Vidu, or Vidu, or whoever Mr. Muresanu
12:14 15 was working with, will not use the information that was captured
16 by the skimming devices to re-encode other cards and to continue
17 to attempt to access accounts of individuals who to this day
18 don't even know that they've been victims of these offenses.

19 Mr. Muresanu, I would suggest, is not the innocent,
12:14 20 despite his young age that Mr. Uller suggests. He flew across
21 the country to various cities. He purchased vehicles. He drove
22 from city to city to effect this scheme. He was in so many ways
23 so much more sophisticated than what you might think an average
24 17-, 18-, 19-year-old would be.

12:14 25 And he did it willingly. Mr. Uller would have us

1 believe that he was only used by this much older person. My
2 recollection is that he told the detectives that, in fact, Vidu
3 was much older, he was in his 30s. So certainly that's older
4 than Mr. Muresanu, but by my view not such an old man.

12:15 5 But he profited from it. He told the detectives that
6 he, in fact, would get a cut from the batch of cards. Each
7 batch of cards, 75 to 150 or 175 that he got, in one batch he
8 made \$30,000.

9 This isn't an individual who was just preyed upon by
12:15 10 someone else. It's someone who actually agreed to participate
11 in a scheme for the purpose of greed, I believe. And I think
12 that that's what we saw during the course of the trial.

13 Now, I do want to say that it is I believe a fact that
14 when Ms. Moreno-Taxman first got this case she offered to
12:15 15 resolve it for a recommendation of 24 months. I believe that
16 sometime before trial she increased that recommendation to 36
17 months. But I don't think it's fair to say that Mr. Muresanu is
18 being punished now for going to trial, that the government's
19 recommendation is inappropriate. Because as the Court well
12:16 20 knows, and I know that the Court was a practicing prosecutor at
21 one point in time, when a case goes to trial we see a different
22 landscape of the evidence than we saw when we are just reading
23 reports and seeing, you know, different things that may have
24 been brought in as pieces of evidence. The Court sees a
12:16 25 different landscape and the prosecution sees a different

1 landscape.

12:16 2 And I think prior to the time that we started to
3 prepare for trial -- in fact, I'm sure -- we didn't know the
4 extent to which Mr. Muresanu had actually been placing the
5 skimming devices. We didn't have the evidence that
6 Ms. Woodard -- if the Court recalls, Ms. Woodard brought a
7 number of photographs that she had taken from her ATM machines
8 of the defendant placing and removing skimmers. We didn't have
9 any of that prior to the time that we actually started to prep
10 for trial.

11 So when a case goes to trial there's always more
12 information that lends a different picture, if you will, to what
13 an actual offense is. And so I would suggest that the Court not
14 read the government's recommendation as something that -- as
12:17 15 Mr., I think, Uller said in his sentencing memorandum --
16 insincere, but is one that's appropriate to the facts that we
17 have learned during the course of the trial.

18 And so I am recommending that the Court sentence the
19 defendant to:

12:17 20 60 months on Count 1;
21 to 24 months on Counts 2, 3, and 4, concurrent to each
22 other and consecutive to Count 1;
23 that the Court impose \$146,721.80 in restitution;
24 that the Court not impose a fine because I don't
12:17 25 believe that the defendant is going to have the wherewithal to

1 pay one.

2 I don't know what to say about the supervised release.
3 I assume that when he completes his prison sentence Mr. Muresanu
4 will be deported, as is appropriate.

12:17 5 And I think that's one of the other things that's so
6 tragic about this case. Because, you know, as we know with all
7 these immigration fights that are going on, there are so many
8 people who want to be here, who are fleeing from persecution in
9 various countries, and who also want to come here and work hard,
12:18 10 and Mr. Muresanu pretended that he was here fleeing persecution
11 in his home country. But he didn't want to work hard. He
12 wanted to travel across the United States breaking the law and
13 making money in any way that he could. He deserves to be
14 sentenced to a substantial prison sentence, and I would ask the
12:18 15 Court to do that.

16 Thank you.

17 THE COURT: All right, thank you. Mr. Uller, anything
18 more you'd like to add by way of rejoinder?

19 MR. ULLER: Just very briefly, Your Honor.

12:18 20 This suggestion that Mr. Muresanu came to the country
21 without any -- that he wasn't fleeing persecution and that he
22 came here to commit crimes, is not tethered to the facts or
23 reality. He was a 15-year-old kid. His family took him here.
24 He had no choice in the matter. And they brought him here
12:18 25 because his people are the most persecuted people in all of

1 Europe. And they are appropriately coming to this country
2 because they have -- our country provides the benefit of --
3 while there is still discrimination and still, you know,
4 realities of racism and persecution, it's not as bad here as it
12:19 5 is in other parts of the world.

6 And, you know, he didn't come here with the intent to
7 commit a crime, he came here with the intent of living a better
8 life and he ended up committing a crime. And, you know, I don't
9 think the Court should be able to read anything more into that.

12:19 10 MS. KRAFT: I didn't say that it wasn't appropriate
11 for him to come, I said it was inappropriate for him to commit
12 the crimes. Nobody ends up committing crimes. A decision to
13 commit crimes is a choice.

14 THE COURT: All right, thank you.

12:20 15 Anything further, Mr. Uller?

16 MR. ULLER: The government did -- in-between the time
17 we were originally scheduled for trial and the second trial, the
18 parties discussed a resolution. Mr. Muresanu indicated he would
19 agree to the 24-month deal, and the government at that point
12:20 20 indicated that it would agree to recommend a joint
21 recommendation of 36 months. And at this point their
22 recommendation is almost three times higher than that, as I
23 calculate it.

24 THE COURT: All right, thank you.

12:20 25 Well, we can begin this afternoon, and I'm sure,

1 Mr. Uller, you have heard this from Mr. Gansner because we had
2 this come up last week. Judge Stadtmueller is among the
3 probably top 1 percent of judges who are very reasonable when it
4 comes to sentencing. But when it comes to identity theft and a
12:21 5 case such as this, I believe both the Sentencing Commission and
6 indeed Congress got it wrong.

7 And the reason that I suggest that is, other than
8 domestic abuse and sexual abuse, there is no offense more
9 devastating on society than the theft of one's identity. It is
12:21 10 long-term lasting. And the victims in this case are the best
11 exemplification of that fact.

12 And fortunately, Mr. Muresanu, Judge Stadtmueller
13 today is not cast in the role of being a legislator. But I'm
14 here to tell you on the basis of the cases that I have seen just
12:22 15 like yours, if I were a member of Congress the statutory
16 mandatory minimum sentence for identity theft: 60 months in
17 prison, no if, ands or buts, because of just how devastating it
18 is. And fortunately, I'm not in the legislature and I do not
19 have the authority to sentence you to what I truly believe to be
12:22 20 an appropriate sentence for identity theft because Congress has
21 set the maximum at 24 months.

22 Now, quite apart from the identity theft, of course,
23 we're dealing with the substantive offenses of using counterfeit
24 unauthorized access devices. Here, too, Congress has made a
12:23 25 distinction in the statute. Because under the recent Supreme

1 Court decision, particularly as related to firearms, the Court
2 is indeed encouraged to take into account the mandatory
3 component of sentencing in deciding the discretionary component
4 that is the guideline sentence. But if you haven't read it, it
12:23 5 appears precisely in 1028(b)(3). The Court is prohibited, in
6 determining the sentence imposed as to the guideline counts, the
7 sentence that is mandated under the mandatory minimum. And so
8 we have to keep everything in perspective.

9 The guidelines in your case call for a sentence of 51
12:24 10 to 63 months as to the offense of conviction in Count 1.
11 Ms. Kraft is suggesting 60 months followed by 24 months, for an
12 84-month sentence.

13 To be sure, this case requires a sentence of more than
14 24 months for a couple of very, very significant reasons.

12:24 15 Despite your age, you are pretty sophisticated. Sophisticated
16 enough to want to leave your own country to find opportunities
17 that were not otherwise available to you in your home. But that
18 does not give one the right to set aside, whether you call it
19 benchmarks, moral compass, whatever, and go about the ways of
12:25 20 the world committing crime, that is, acquiring money or wealth
21 other than the old fashioned way, and that is to earn it. And
22 it ill behooves anyone who is seeking a better life in a new
23 country, whether under the aegis of asylum or just coming as an
24 immigrant, to take that step and set aside everything else and
12:26 25 take advantage and put in jeopardy, as I have already put on the

1 record, the identities of other individuals. If you think you
2 were persecuted, how do you think these victims feel?

3 Seriously. It's beyond the pale. And you are certainly
4 sophisticated enough to appreciate in full Kodak color the
12:26 5 seriousness of the activities that you participated in. And
6 they require an appropriate sentence, make no mistake about it.

7 I take no personal pride out of having to send anyone
8 to prison. Again, seriously. But as they say, it comes with
9 the job. And I've been a judge for more than 31 1/2 years and
12:27 10 I've sentenced well over 2100 defendants. And as you know from
11 your own presentence report, it's expensive, \$99.45 per day per
12 inmate.

13 We have about 181,000 federal prisoners, down about 38
14 to 39,000 from the all-time high in June of 2015, when we had
12:27 15 219,586. But back then the cost per inmate per day was \$80.25.
16 And in spite of having a significant decline of something close
17 to 15 percent in the prison population, the cost per day per
18 inmate has eclipsed that. And so as a society, we are still
19 spending well over \$17 million a day, just to house prisoners.

12:28 20 At the same time, I also appreciate the fact that as a
21 non-U.S. citizen you're not going to be entitled to much of the
22 programming that might otherwise be available to U.S. citizens
23 who find themselves incarcerated in the United States. And
24 that's a matter for Congress and the Bureau of Prisons to
12:28 25 address. The Court does not have any control over who gets what

1 programming and under what circumstance.

2 What the Court does have control over in terms of the
3 discretion is what ought to be the appropriate, fair, just, and
4 reasonable sentence for the conduct charged in Count 1. As you
12:29 5 might have already gleaned from my earlier comments, this is a
6 deadly, deadly serious matter. And perhaps no one lost life or
7 limb, the hard reality is it is significant conduct that
8 threatens the very vibrance of the economy of which we are
9 blessed with here in these United States. And perhaps not
12:29 10 because of the criminal conduct per se, but that may have been a
11 driving force in your attempting to relocate. And I appreciate
12 that and I get that. But that doesn't give you the right to
13 come to this country and set aside every moral principle in
14 terms of how you relate and interrelate with those who are
12:30 15 native born or who are here lawfully.

16 Because this conduct is serious and because it has
17 become so pervasive, it requires appropriate intervention. You
18 couldn't get away with this conduct in your home country, and
19 you shouldn't be able to get away with it here in these United
12:30 20 States. And as a consequence, we need to keep in mind, in the
21 forefront, the whole genre of how serious this conduct has
22 become; as well as deterrence to those who, like yourself, will
23 follow the same footsteps and engage in the same sort of
24 conduct.

12:30 25 And the entire process requires a balancing of all of

1 these competing interests. And when I go through the rubric of
2 taking into account the costs associated with incarceration; the
3 relevant conduct that underlies this case; the fact that you are
4 not a U.S. citizen; and in order to ensure that those like you
12:31 5 do not prey upon American citizens in engaging in this sort of
6 conduct, I have concluded that the only fair, just and
7 reasonable sentence in this case is a sentence of 34 months
8 custody of the Bureau of Prisons as to the offense charged in
9 Count 1, followed by a 24-month consecutive sentence as to the
12:31 10 offense of conviction in Counts 2 through 4.

11 Make no mistake about it, this sentence has nothing to
12 do with the fact that you elected to go to trial. Because as
13 you may recall from Ms. Leija sitting with you at the last
14 pretrial conference, I made it very clear to both you and she
12:32 15 that you are certainly free to exercise your right to go to
16 trial, but unfortunately under the U.S. Sentencing Guidelines
17 you do not receive credit for acceptance of responsibility. And
18 I assume that Ms. Leija, and perhaps Mr. Uller would as well,
19 took the time to explain those consequences to you.

12:32 20 Fortunately there is no enhancement under U.S.
21 Sentencing Guideline 3C1.1 because you did not testify, and
22 therefore there's no basis for the Court to apply that
23 enhancement which, standing alone, would have added three levels
24 to the offense conduct, assuming the Court were obliged to make
12:33 25 the finding on the basis of the trial record that you obstructed

1 justice. But you're actually spared of that enhancement because
2 you did not testify, therefore, there was no basis for the Court
3 to impose that enhancement.

4 When it comes to the matter of whether you will or
12:33 5 will not be deported, as you know the Immigration and Customs
6 Enforcement even as of today's date has not filed a detainer.
7 Whether they elect to at some point in the future, I have no way
8 of knowing.

9 And so the Court, on the basis of the record before me
12:34 10 today, is obliged to impose conditions of supervised release in
11 the event at some point you are released from the custodial
12 portion of the Court's sentence.

13 The Court earlier circulated a set of 17 conditions.
14 Mr. Uller made brief mention of those in his comments.

12:34 15 Ms. Kraft, have you had an opportunity to consider
16 those?

17 MS. KRAFT: Briefly, but, yes, they're fine.

18 THE COURT: Mr. Uller, do you have any problem with
19 any of them?

12:34 20 MR. ULLER: No, Your Honor.

21 THE COURT: I'm not going to impose any fine because
22 of the large amount of restitution that the Court is obliged to
23 impose which is mandatory.

24 So for all of these reasons this now becomes the
12:35 25 formal sentence of the Court:

1 Ionel Muresanu, on September 11th of this year you
2 were found guilty following a jury trial and were adjudged
3 guilty as to Count 1 of the underlying indictment charging you
4 with possession of 15 or more counterfeit and unauthorized
12:35 5 access devices, in violation of Title 18 of the U.S. Code,
6 Section 1029(a)(3) and 2, as well as Count 2 through 4 of the
7 same indictment charging you with an aggravated identity theft
8 in violation of Title 18, Section 1028A(a)(1).

9 The Court having asked the defendant why judgment
12:35 10 should not now be pronounced and pursuant to the Sentencing
11 Reform Act of 1984, it is the judgment of the Court that you,
12 Ionel Muresanu, be committed to the custody of the Bureau of
13 Prisons to be imprisoned for a term of 34 months as to the
14 offense of conviction in Count 1, and a term of 24 months as to
12:36 15 the offenses of conviction separately in Counts 2 through 4,
16 which are to be served consecutive to the sentence imposed as to
17 Count 1, but concurrent with one another for a total term of 58
18 months of imprisonment.

19 The Court, as the Court noted earlier, determines that
12:36 20 you do not have the financial ability to pay a fine and
21 accordingly waives any fine in your case. However, pursuant to
22 the Mandatory Victims Restitution Act of 1996, you are to pay
23 restitution in the aggregate amount of \$146,721.80. That amount
24 is due and payable immediately to the First Tennessee Bank,
12:37 25 Corporate Security, to the attention of Ms. Brandi, B-r-a-n-d-i,

1 Woodard, W-o-o-d-a-r-d, 1214 Murfreesboro Road, Franklin,
2 Tennessee, 37064. Any interest on the restitution will be
3 waived. Payments are to apply first toward the special
4 assessment that I will momentarily impose, and then to the
12:37 5 restitution until both are paid in full.

6 Following release from imprisonment the defendant
7 shall be placed on supervised release for a term of 1 year as to
8 each count of conviction, to be served concurrent with one
9 another for a total term of 1 year of supervised release.

12:38 10 While on supervised release Mr. Muresanu will be
11 subject to each of the 17 conditions addressed in the Court's
12 submittal to counsel to which there was no objection or other
13 clarification sought. Noting parenthetically, of course,
14 pursuant to the Seventh Circuit's decision in *Siegel* and its
12:38 15 progeny, it may be appropriate at the time of Mr. Muresanu's
16 release from the custodial portion of the Court's sentence to
17 revisit the conditions that the Court has today adopted, either
18 adding or amending conditions.

19 In accordance with the Mandatory Victims Restitution
12:38 20 Act found in 18 U.S.C. § 3013, the defendant is ordered to pay a
21 special assessment in the amount of \$100 as to each count of
22 conviction, for a total special assessment of \$400. That
23 special assessment is due and payable immediately at the Office
24 of the Clerk of the Court, which is located in Room 362 of this
12:39 25 building.

1 Mr. Uller, if you have any recommendation as to a
2 place of confinement I'll be happy to include it in the judgment
3 and commitment order, noting, of course, that the matter of
4 inmate classification, as well as placement remains a executive
12:39 5 branch function within the discretion of the Bureau of Prisons.
6 But, nonetheless, the Court is happy to include a recommendation
7 should you or your client have one.

8 MR. ULLER: We don't, Your Honor.

9 THE COURT: Thank you.

12:39 10 Having been found guilty of each of the offenses
11 charged in the underlying indictment and the Court having
12 imposed what it believed to be an appropriate, fair, just, and
13 reasonable sentence, I now advise Mr. Muresanu that if he
14 believes that the guilty findings and/or the sentence that the
12:40 15 Court has imposed to be contrary to law, I now advise him of his
16 right of appeal.

17 Should you elect to appeal, Mr. Muresanu, Mr. Uller is
18 obliged to file a notice of appeal on your behalf within 14 days
19 of the docketing of the judgment and commitment order, otherwise
12:40 20 you will have effectively waived any right of appeal. If you
21 are unable to pay the cost of an appeal, you do have the right
22 to seek relief to appeal in forma pauperis.

23 Mr. Uller, as you are aware pursuant to the teachings
24 of the U.S. Supreme Court in *Rowe vs. Flores-Ortega*, decided in
12:40 25 February of 2000, you have an obligation to confer with

1 Mr. Muresanu as to the merit of any appeal and be guided by any
2 request that he may make of the you in that regard. In the
3 event that he elects to forego an appeal, I would invite you, as
4 his counsel, to formally notify the Court, whether by pleading
12:41 5 or letter, indicating that you have discussed with your client
6 his right of appeal and that he has elected to forego an appeal.
7 In the event he elects to forego an appeal, I would invite you
8 to include as part of any submission the signature of your
9 client acknowledging having been advised of his right of appeal
12:41 10 and that he elected to forego.

11 Anything further, Ms. Kraft or Mr. Uller?

12 MS. KRAFT: Nothing further from the United States,
13 Your Honor.

14 MR. ULLER: No, Your Honor.

12:41 15 THE COURT: Court stands in recess until 1:00.

16 THE BAILIFF: All rise.

17 (Proceedings concluded at 12:41 p.m.)

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C E R T I F I C A T E

I, JOHN T. SCHINDHELM, RMR, CRR, Official Court Reporter for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of my original machine shorthand notes taken in the aforementioned matter to the best of my skill and ability.

Signed and Certified January 11, 2019.

/s/John T. Schindhelm

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